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No. 01-896

In the Supreme Court of the United States

FORD MOTOR COMPANY AND
CITIBANK (SOUTH DAKOTA), N.A., PETITIONERS

v.

JOHN B. MCCAULEY, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether the cost to the defendant of complying with an injunction sought by a plaintiffs' class may satisfy the amount-in-controversy requirements of the diversity jurisdiction statute, where such compliance would cost the defendant more than the $75,000 jurisdictional amount whether it covered the entire class or any single member of the class.

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INTEREST OF THE UNITED STATES

The diversity jurisdiction statute, 28 U.S.C. 1332, confers upon the federal district courts jurisdiction over cases in which "the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs," and the parties are citizens of different States or citizens of a State and citizens of a foreign country. Congress established the amount-in-controversy requirement in the Judiciary Act of 1789, and adjusted the amount on several subsequent occasions, to confine diversity jurisdiction to relatively significant cases. Congress has not, however, directed that the amount in controversy be assessed only from the perspective of the plaintiff. To the contrary, the general statutory

text focuses on the "value" of "the matter in controversy," and allows that value to be considered from the perspective of either party.

The United States has a significant interest in an interpretation of the amount-in-controversy requirement that, in cases seeking equitable relief, measures that amount either by the benefit to the plaintiff or the cost to the defendant, whichever is greater. In class actions, such as this one, the requirement is satisfied if the defendant's cost of providing injunctive relief to any class member exceeds $75,000. Such an understanding of the amount-in-controversy requirement serves Congress's purpose of assuring a neutral national forum for the adjudication of all substantial disputes between persons of diverse citizenship. In addition, such an interpretation avoids creating incentives to file preemptive suits in federal court and tensions between 28 U.S.C. 1332 and Federal Rule of Civil Procedure 23. More broadly, the rules governing class actions have enormous consequences for the federal courts and interstate commerce, and the United States has previously participated as an amicus curiae in such cases. See, *e.g.*, *Devlin* v. *Scardelletti*, No. 01-417 (argued Mar. 26, 2002).

STATEMENT

1. In early 1993, petitioners Ford Motor Company (Ford) and Citibank (South Dakota), N.A. (Citibank), issued a credit card that offered cardholders the opportunity to save on the purchase or lease of a new Ford vehicle. Under the program, cardholders earned a 5% rebate on each purchase made using the credit card, redeemable on the purchase or lease of certain Ford vehicles. Cardholders could accrue a maximum of $700 in rebates per year (representing $14,000 in purchases)

over a five-year period, for a maximum possible rebate of $3500. On December 31, 1997, less than five years after the program's inception, Ford and Citibank terminated the rebate accrual feature of the credit card. Pet. App. 3a.

2. After the termination of the rebate program, cardholders filed suits against Ford, and in some instances also against Citibank, in state courts in Washington, Oregon, California, Illinois, Alabama, and New York. They alleged that Ford and Citibank misrepresented or withheld information about the nature and duration of the program and wrongfully discontinued it. Ford and Citibank removed the cases to federal district court on the basis of diversity jurisdiction. Pursuant to 28 U.S.C. 1407, the Judicial Panel on Multidistrict Litigation transferred the cases to the United States District Court for the Western District of Washington for coordinated pretrial proceedings. Pet. App. 3a.

The district court consolidated the cases. The plaintiffs (respondents here) filed a consolidated complaint in that court on behalf of a nationwide class of nearly six million Ford/Citibank cardholders. The consolidated complaint asserted state-law causes of action for breach of contract, unjust enrichment, and violation of state consumer protection statutes. Consolidated Complaint 8-13. As relief, the complaint sought compensatory damages, punitive damages, and an injunction ordering "specific performance of the Rebate Program." *Id.* at 13. The complaint pleaded diversity jurisdiction under 28 U.S.C. 1332. Consolidated Complaint 3; see Pet. App. 3a-4a.

The plaintiffs moved for class certification under Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure. The district court, however, did not rule on

that request. Instead, acting on its own motion, the court held that it lacked subject-matter jurisdiction over the case, reasoning that the $75,000 amount-in-controversy requirement of the diversity jurisdiction statute was not satisfied. The court dismissed the consolidated complaint and remanded the underlying cases to their state courts of origin. Pet. App. 4a-5a, 23a-33a.

3. The United States Court of Appeals for the Ninth Circuit affirmed in part and dismissed in part. The court dismissed as unappealable petitioners' challenge to the district court's remand order, see 28 U.S.C. 1447(d), but upheld the district court's conclusion that diversity jurisdiction did not exist with respect to respondents' consolidated complaint. Pet. App. 13a-20a.[1]

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[1] The court of appeals held that it had appellate jurisdiction under 28 U.S.C. 1291 to review the district court's order dismissing the consolidated complaint, apparently on the ground that the dismissal of the complaint, without leave to amend, was tantamount to a "dismissal of the action." Pet. App. 6a. If, however, the consolidated complaint is viewed as being in the same "action" as the removed state-court complaints, the district court did not dismiss the action, but instead remanded it, which is not an appealable decision. 28 U.S.C. 1447(d). It would be questionable in that circumstance whether the court of appeals had jurisdiction to review the dismissal order. If, however, the consolidated complaint is viewed as being in a separate "action" from the removed state-court complaints, the district court could have dismissed that action, while remanding the separate actions commenced by the state court complaints. The court of appeals' exercise of appellate jurisdiction would seem permissible in that circumstance, although it is less clear that petitioners would be the property parties to appeal the dismissal of the consolidated complaint filed against them. Respondents did not dispute appellate jurisdiction in their brief in opposition in this Court.

In examining the question of diversity jurisdiction under Section 1332, the court of appeals observed that "the sole jurisdictional question is whether the minimum amount in controversy required to maintain a diversity suit in federal court is present." The court noted that the diverse citizenship of the parties was not contested. Pet. App. 6a.

First, the court of appeals concluded that the plaintiffs' claim for compensatory damages did not satisfy the amount-in-controversy requirement of Section 1332. The court noted that "Ford and Citibank do not contend that any plaintiff has an individual damages claim exceeding $75,000." Nor did Ford and Citibank contend that the plaintiffs were asserting "a common and undivided interest in a claim for damages" that could satisfy the amount-in-controversy requirement. Pet. App. 6a-7a.

Second, the court of appeals held that the plaintiffs' claim for an injunction could not satisfy the amount-in-controversy requirement. The court noted that the lower courts have taken different approaches to measuring the amount in controversy with respect to claims for injunctive relief: some courts apply a "plaintiff-viewpoint" approach, which considers only the value of the requested injunction *to the plaintiff*, while other courts apply an "either viewpoint" approach, which also considers the defendant's cost of complying with the requested injunction. Pet. App. 7a-8a.

The court of appeals noted that, although the Ninth Circuit had applied the "either viewpoint" approach in earlier cases, it had not done so in a class action. See Pet. App. 8a (citing *Snow* v. *Ford Motor Co.*, 561 F.2d 787, 790 (9th Cir. 1977)). The court reasoned that applying the "either viewpoint" approach in a class action would violate the rule against aggregation of claims

articulated in *Snyder* v. *Harris*, 394 U.S. 332 (1969), and *Zahn* v. *International Paper Co.*, 414 U.S. 291 (1973), because "plaintiffs with minimal damages could dodge the non-aggregation rule by praying for an injunction." Pet. App. 9a. Accordingly, although Ford and Citibank maintained that compliance with the requested injunction would cost them more than $75,000, the court concluded that the amount-in-controversy requirement was not satisfied. *Id.* at 10a.

The court of appeals recognized that the rule against aggregation is not violated when plaintiffs have "a common and undivided interest" in their claim for relief. The court concluded, however, that the plaintiffs, who "charged purchases and accrued rebates individually, not as a group," did not have a "common and undivided interest in accruing rebates under the program." Pet. App. 10a.

Finally, the court of appeals held that the plaintiffs' claim for punitive damages did not satisfy the amount-in-controversy requirement. The court reasoned that "punitive damages asserted on behalf of a [putative] class may not be aggregated for jurisdictional purposes where, as here, the underlying cause of action asserted on behalf of the class is *not* based upon a title or right in which the plaintiffs share, and as to which they claim, a common interest." Pet. App. 17a (quoting *Gilman* v. *BHC Sec., Inc.*, 104 F.3d 1418, 1431 (2d Cir. 1997)).[2]

SUMMARY OF ARGUMENT

I. Congress has authorized federal district courts to exercise jurisdiction over "all civil actions" between

[2] This Court granted the writ of certiorari only with respect to Question 1 in the petition, which concerns the claim for injunctive relief, and not with respect to Question 2, which concerns the claim for punitive damages.

parties of diverse citizenship "where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs." 28 U.S.C. 1332(a) (1994 & Supp. V (1999). The text of the diversity jurisdiction statute focuses on the "value" of "the matter in controversy." Nothing in the statute confines the analysis of that value to the plaintiff's perspective when a case seeks injunctive or other equitable relief that the plaintiff and defendant value differently. To the contrary, the text is most naturally understood as allowing the amount in controversy to be measured from either party's perspective in such cases. It is thus sufficient that either the benefit of an injunction to the plaintiff or the cost of an injunction to the defendant exceeds $75,000.

Such a rule advances Congress's purpose of providing a neutral national forum for the resolution of all substantial disputes involving diverse parties. A case is equally substantial whether the potential benefit to the plaintiff exceeds $75,000 or the potential cost to the defendant exceeds $75,000. Such a rule also accords with Congress's purpose, expressed in the removal statute, of assuring out-of-state plaintiffs and out-of-state defendants comparable access to federal court. It enables either party to seek a federal forum when its own stake in the case exceeds the jurisdictional amount. For such reasons, a number of lower courts and commentators agree that the amount in controversy should be valued from either party's perspective.

II. Nothing in the procedural rules permitting class actions requires abandoning the "either perspective" rule in such actions. Although the court below has long applied the "either perspective" rule in single-plaintiff, single-defendant suits, it concluded that precedents of

this Court precluded application of the rule in class suits. That view is mistaken.

In class actions seeking injunctive relief, the amount in controversy is appropriately measured by the benefit or cost of an injunction running from one plaintiff to one defendant. See *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 610 (7th Cir. 1997) (Posner, C.J.), cert. denied, 522 U.S. 1153 (1998). Such an analysis, by separately considering the value of each plaintiff's claim against each defendant, assures that the procedural class action device neither expands nor contracts the scope of the diversity jurisdiction authorized in 28 U.S.C. 1332. A court may exercise diversity jurisdiction over a class action if, but only if, it could have exercised diversity jurisdiction over individual actions by each class member.

The court below concluded that assessing the amount in controversy from the defendant's perspective somehow ran afoul of the non-aggregation principle of *Snyder* v. *Harris*, 394 U.S. 332 (1969), and *Zahn* v. *International Paper Co.*, 414 U.S. 291, 294 (1973). But the "either perspective" rule is consistent with *Snyder* and *Zahn*. Those cases hold that plaintiffs cannot create diversity jurisdiction by using the class action device to aggregate claims that would not independently satisfy the amount-in-controversy requirement. Whether a federal court may exercise diversity jurisdiction over a class action thus turns on whether a federal court could exercise diversity jurisdiction over a traditional single-plaintiff, single-defendant action asserting the same claims. The appropriate application of the "either perspective" rule in the class action context is to ask whether the value of the requested injunction would be worth more than $75,000 to either the plaintiff or defendant in a single-plaintiff, single-

defendant action. By refusing to apply the "either perspective" rule in class actions, the court below allows plaintiffs, by bringing their claims in a class action, to divest federal jurisdiction that would exist in an individual action. That result is inconsistent with the spirit of *Snyder* and *Zahn* and the principle that the Federal Rules should not alter the reach of jurisdictional statutes.

Allowing class actions involving diverse parties to be adjudicated in federal court when the amount-in-controversy requirement is satisfied from either side's perspective offers several practical advantages. As in individual actions, diversity jurisdiction assuages concerns about state court bias against out-of-state parties and provides a nationally uniform set of procedural rules to assure the fair, speedy, and inexpensive resolution of cases. In class actions, moreover, parties may benefit from the federal courts' greater resources and expertise with regard to complex litigation, the availability of a mechanism for the transfer of related cases to a single district court for coordinated or consolidated pretrial proceedings, and other incentives for efficient adjudication.

ARGUMENT

THE AMOUNT-IN-CONTROVERSY REQUIREMENT OF 28 U.S.C. 1332 IS SATISFIED IN A CLASS ACTION SEEKING INJUNCTIVE RELIEF IF THE COST TO THE DEFENDANT OF PROVIDING RELIEF TO ANY CLASS MEMBER WOULD EXCEED $75,000

I. IN A CONVENTIONAL LAWSUIT, THE AMOUNT IN CONTROVERSY IS CORRECTLY MEASURED BY EITHER THE VALUE OF AN INJUNCTION TO THE PLAINTIFF OR THE COST OF AN INJUNCTION TO THE DEFENDANT

In assessing whether the amount-in-controversy requirement of 28 U.S.C. 1332 is satisfied in a case seeking injunctive relief, a federal court should consider not only the value of the relief to the plaintiff, but also the cost of the relief to the defendant. If the amount exceeds $75,000 from either the plaintiff's or the defendant's perspective, the amount-in-controversy requirement is satisfied. That "either perspective" approach is consistent with the statutory text, advances the statutory purposes of providing a neutral national forum for all significant disputes involving diverse parties, promotes fairness between plaintiffs and defendants with respect to access to the federal courts, and avoids artificial incentives to file declaratory judgment actions in order to secure a federal forum.

A. The Text of the Diversity Jurisdiction Statute Does Not Confine the Amount-in-Controversy Analysis to the Plaintiff's Perspective

The diversity jurisdiction statute, 28 U.S.C. 1332, provides that "[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs," and the parties are of diverse citizenship. Since the establishment of the lower federal courts in the Judiciary Act of 1789, their diversity jurisdiction has been conditioned on satisfaction of an amount-in-controversy requirement. Although that amount has increased over time from $500 in 1798 to $75,000 today, the text of requirement has otherwise remained essentially unchanged. See Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 78 ("the circuit courts shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars").[3]

Nothing in the text of Section 1332 or its statutory predecessors states, or even suggests, that "the sum or value" of "the matter in controversy" is to be measured only from the perspective of the plaintiff. The general statutory language directs attention to the "value" of "the matter in controversy," rather than to the perspective of one party or the other. The text is most naturally understood as authorizing the exercise of diversity jurisdiction whenever the "matter in controversy" exceeds $75,000 from either the plaintiff's or the defendant's perspective. See Brittain S. McInnis, *The $75,000.01 Question: What Is the Value of Injunctive Relief?*, 6 Geo. Mason L. Rev. 1013, 1031 (1998) (observing that "the either viewpoint rule mirrors the flexibility inherent in the statute's language").

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[3] For many years, 28 U.S.C. 1331, the general federal-question jurisdiction statute, contained a similar amount-in-controversy requirement. Some of the cases cited in the text involve that requirement.

It would seem artificial to place the "value" of "the matter in controversy" at anything less than the amount at stake for either the plaintiff or the defendant, whichever is greater. Suppose, for example, that a homeowner sues to enjoin an energy company from running a pipeline across a portion of the homeowner's property. The benefit to the homeowner of excluding the pipeline might not approach $75,000, although the expense to the energy company of rerouting the pipeline might easily exceed $75,000. In such a case, the amount in controversy for purposes of Section 1332 is most sensibly measured from the perspective of either party, "because the amount in controversy in a lawsuit exceeds [the jurisdictional amount] if either the plaintiff or defendant will have to pay that amount." Erwin Chemerinsky, *Federal Jurisdiction* § 5.3, at 292 (2d ed. 1994); see *McCarty* v. *Amoco Pipeline Co.*, 595 F.2d 389 (7th Cir. 1979) (applying "either perspective" approach on similar facts).[4]

In some cases, either party to a dispute could have initiated the suit, especially in light of the Declaratory Judgment Act. Such cases underscore the arbitrariness of valuing the dispute only from the perspective of whichever party actually did so. As the Court has observed in a related context, "[n]o matter which party brings it into court, the controversy remains the same; it involves the same amount of money and is to be

[4] The "either perspective" rule makes particular sense because, as a practical matter, the value of the injunction to the plaintiff will reflect the cost of compliance to the defendant. If liability is established, a rational plaintiff would agree to settle the matter for "a shade less than the cost that the injunction would impose on the defendant." *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 609 (7th Cir. 1997), cert. denied, 522 U.S. 1153 (1998).

adjudicated and determined under the same rules." *Horton* v. *Liberty Mutual Ins.*, 367 U.S. 348, 354 (1961). A rule valuing the matter in controversy solely from the perspective of the plaintiff would create an artificial incentive to sue for potential defendants who favor a federal forum, and could even prompt a race to the courthouse. In the pipeline example, the defendant could guarantee a federal forum only by promptly filing a declaratory judgment action in district court. A rule that values the matter in controversy from the perspective of either party maintains the parity between a party's right to initiate a lawsuit in federal court and its right to remove, and so eliminates the incentive to sue first.

B. The Purposes of the Diversity Jurisdiction Statute Are Advanced by Measuring the Amount in Controversy from Either Party's Perspective

Congress enacted the diversity jurisdiction statute to provide citizens of different States, or citizens of a State and citizens of a foreign country, an alternative national forum to resolve their disputes. The statute, like Article III of the Constitution, reflects the Framers' concerns about the actual or perceived partiality of state courts to local interests. See, *e.g.*, *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 347 (1816) (observing that diversity jurisdiction rests on the presumption that "state attachments, state prejudices, state jealousies, and state interests, might sometimes obstruct, or control, or be supposed to obstruct or control, the regular administration of justice"); *Bank of the United States* v. *Deveaux*, 9 U.S. (5 Cranch) 61, 87 (1809).

Congress included the amount-in-controversy requirement in the original diversity jurisdiction statute,

and subsequently adjusted the amount, in order to reserve the federal courts' diversity jurisdiction for relatively substantial cases in monetary terms. See 15 *Moore's Federal Practice* § 102.109[3], at 102-199 (3d ed. 1998) ("[T]he jurisdictional-amount requirement reflects a congressional judgment that federal judicial resources should be devoted only to those diversity cases in which the financial stakes rise to a predetermined level.").[5] Thus, when Congress raised the jurisdictional amount in 1958 from $3000 to $10,000, the Senate Judiciary Committee explained that "the amount should be fixed at a sum of money that will make jurisdiction available in *all substantial controversies* where other elements of Federal jurisdiction are present." S. Rep. No. 1830, 85th Cong., 2d Sess. 3-4 (1958) (emphasis added). The Committee added that "[t]he jurisdictional amount should not be so high as to convert the Federal courts into courts of big business nor so low as to fritter away their time in the trial of petty controversies." *Id.* at 4. Similarly, when Congress increased the jurisdictional amount in 1996 from $50,000 to $75,000, the Senate Judiciary Committee, after noting "the importance of balancing the need to assist the Federal judiciary in reducing its increasing caseload with the needs of those making use of our Federal courts," concluded that "[t]he adjustment of the jurisdictional amount provides claims with substantial amounts at issue access to a Federal

[5] Congress has understood the requirement as serving both to preserve the role of the state courts and, in the modern era, to avoid overburdening the federal courts. See, *e.g.*, Thomas E. Baker, *The History and Tradition of the Amount in Controversy Requirement: A Proposal to "Up the Ante" in Diversity Jurisdiction*, 102 F.R.D. 299, 302-318 (1985).

forum." S. Rep. No. 366, 104th Cong., 2d Sess. 29-30 (1996).

The purpose of the diversity jurisdiction statute, including its amount-in-controversy requirement, is thus to provide a neutral national forum for the adjudication of substantial controversies involving diverse parties. That purpose is fully served only when the federal courts are open to cases satisfying the jurisdictional amount from the perspective of either party. After all, "the matter in controversy" is equally "substantial" whether the potential benefit to the plaintiff is more than $75,000 or the potential cost to the defendant is more than $75,000. As a leading treatise has observed, "the purpose of a jurisdictional amount in controversy requirement—to keep trivial cases away from the federal court system—is satisfied when the case is worth a large sum of money to either party." 14B Charles A. Wright et al., *Federal Practice and Procedure* § 3703, at 124 (1998); accord 15 *Moore's Federal Practice*, *supra*, § 102.109[3], at 102-199.

In addition, measuring the amount in controversy from the perspective of either party promotes the symmetry that Congress has sought to achieve between out-of-state plaintiffs and out-of-state defendants with respect to access to federal court in diversity cases. Congress could have left it solely to the plaintiff, as the master of its complaint, to decide whether a substantial dispute between diverse parties would be adjudicated in state or federal court. Instead, beginning with the Judiciary Act of 1789, Congress gave out-of-state defendants (and sometimes all defendants) the right to remove such cases to federal court. See 28 U.S.C. 1441; *Saint Paul Mercury Indem. Co.* v. *Red Cab Co.*, 303 U.S. 283, 286-287 (1938) (discussing history of removal statute). The removal statute clearly indi-

cates concern for the out-of-state defendant, who otherwise would have no control over the forum. Yet, if the amount in controversy were measured only from the plaintiff's perspective, a defendant could not remove the case to federal court, even though the defendant stood to lose more than the jurisdictional amount from an adverse state court judgment. That would be so even in those cases where either party might have initiated a suit, so that it is merely fortuitous which party is the plaintiff and which is the defendant.

The "either perspective" rule also has practical advantages. Under a "plaintiff only" rule, plaintiffs could demonstrate the value of the case from their own perspective, and thus based on information available to them; defendants, however, could demonstrate the value of the case only from their adversary's perspective, and thus based on information that might not be available to them early in the case when removal must occur. See 28 U.S.C. 1446(b) (time limits for removal); see also McInnis, *supra*, 6 Geo. Mason L. Rev at 1023 (suggesting that valuing the amount in controversy from either party's perspective avoids "forcing courts to accept a one-sided, and hence distorted, assessment of the value of a claim"). Forcing defendants to rely on information outside their possession is particularly problematic in the removal context, in which the removing defendant bears the burden of establishing jurisdiction. *Carson* v. *Dunham*, 121 U.S. 421, 425 (1887). In addition, it may be easier in some cases to value the injunction from the defendant's perspective. While the value of the injunction from a plaintiff's perspective may involve difficult valuation problems (*e.g.*, what is the value of not having a pipeline under your land?), the defendant's costs of compliance may be relatively concrete.

C. This Court Has Measured the Amount in Controversy from Either Party's Perspective, and the Trend Among Lower Courts and Commentators Favors That Approach

This Court has recognized that, in cases seeking injunctive or other equitable relief, "the matter in controversy" may have a different value to the plaintiff and the defendant. In *Glenwood Light & Water Co.* v. *Mutual Light, Heat & Power Co.*, 239 U.S. 121, 124-125 (1915), for example, the plaintiff sought an injunction that would have required the defendant to relocate its utility poles and wires—relief that would have produced a benefit to the plaintiff exceeding the $3000 jurisdictional amount, but which would have cost the defendant no more than $500. Although the Court held in that case that the amount-in-controversy requirement was satisfied based on the value to the plaintiff of obtaining the requested injunction, see *id.* at 124, the Court has not held that the requirement cannot also be satisfied based on the value to the defendant of defeating the injunction.

Indeed, in *Market Co.* v. *Hoffman*, 101 U.S. 112 (1879), this Court considered the amount in controversy from the defendant's perspective in applying an 1879 statute that, in terms similar to those of the diversity jurisdiction statute, authorized appeals to this Court from the Supreme Court of the District of Columbia "in any case where the matter in dispute, exclusive of costs, exceeds the value of twenty-five hundred dollars." Act of Feb. 25, 1879, ch. 99, § 4, 20 Stat. 321. In that case, 206 persons who occupied stalls in the defendant's market successfully sued to enjoin the defendant from selling the stalls to a third party. The Court concluded that the $2500 amount-in-controversy

requirement was satisfied because "the sale which the company proposed to make, and the court below enjoined, would have realized to the company more than $60,000." 101 U.S. at 113.

In many subsequent cases, the Court has described the amount-in-controversy inquiry for federal jurisdiction in terms that would permit consideration of the value of the case from either party's perspective. Thus, in *Hunt* v. *Washington State Apple Advertising Commission*, 432 U.S. 333 (1977), the Court observed that, "[i]n actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation," *id.* at 347, without suggesting that only the value to the plaintiff is to be considered. See, *e.g.*, *McNutt* v. *General Motors Acceptance Corp.*, 298 U.S. 178, 181 (1936) ("jurisdiction is to be tested by the value of the object or right to be protected against interference"); *Hunt* v. *New York Cotton Exch.*, 205 U.S. 322, 336 (1907) ("jurisdiction is determinable by the object sought to be accomplished"); *Mississippi & Missouri R.R.* v. *Ward*, 67 U.S. (2 Black) 485, 492 (1862) ("the removal of the obstruction [a bridge] is the matter of controversy, and the value of the object must govern"). The Court has gone so far as to observe, albeit in dicta, that "the pecuniary value of the matter in dispute may be determined * * * by the pecuniary result to one of the parties immediately from the judgment." *Smith* v. *Adams*, 130 U.S. 167, 175 (1889).

A number of lower courts have recognized that, in cases seeking injunctive or other equitable relief, "the test for determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce." *Ronzio* v. *Denver & Rio Grande Western R.R.*, 116 F.2d 604, 606 (10th Cir. 1940); see, *e.g.*, *Sanchez* v. *Monumental Life Ins. Co.*, 102 F.3d 398, 405 (9th Cir. 1996); *Oklahoma Retail Grocers Ass'n* v. *Wal-Mart Stores, Inc.*, 605 F.2d 1155, 1159-1160 (10th Cir. 1979); *McCarty*, 595 F.2d at 393-395; *Smith* v. *Washington*, 593 F.2d 1097, 1100 & n.6 (D.C. Cir. 1978); *Berman* v. *Narragansett Racing Ass'n*, 414 F.2d 311, 314 (1st Cir. 1969); *Government Employees Ins. Co.*, v. *Lally*, 327 F.2d 568, 569 (4th Cir. 1964); *Ridder Bros.* v. *Blethen*, 142 F.2d 395, 398-399 (9th Cir. 1944); cf. *Ericsson GE Mobile Communications, Inc.* v. *Motorola Communications & Elec., Inc.*, 120 F.3d 216, 220 & n.15 (11th Cir. 1997) (recognizing that "there are persuasive arguments to support the adoption of the either-viewpoint rule" but adhering to contrary circuit precedent). The leading commentators, as well, have suggested that the amount in controversy is more appropriately measured from the perspective of either party in cases seeking injunctive relief. See, *e.g.*, 14B Wright et al., *supra*, § 3703, at 125 (observing that the "either perspective" rule "seems to be the appropriate one"); 15 *Moore's Federal Practice*, *supra*, § 102.109[3], at 102-199; Chemerinsky, *supra*, § 5.3, at 292 (observing that "the trend seems to be" in the direction of the "either perspective" rule).

II. THERE IS NO BASIS FOR ADOPTING A DIFFERENT RULE IN THE CLASS ACTION CONTEXT

The court below has applied the "either perspective" rule in conventional single-plaintiff, single-defendant cases for decades. See, *e.g.*, *Ridder Bros.*, 142 F.2d at 399. Nonetheless, the court concluded that application of the "either perspective" rule was foreclosed in the class action context by this Court's decisions in *Snyder*

v. *Harris*, 394 U.S. 331 (1969), and *Zahn* v. *International Paper Co*, 414 U.S. 291 (1973). On the contrary, the "either perspective" rule, properly applied, is more consistent with *Snyder* and *Zahn* than the court's own approach.

A. Measuring the Amount in Controversy by the Benefit or Cost of an Injunction Running to One Class Member Assures that Aggregation Neither Expands nor Contracts the Jurisdiction of the Federal Courts

In a case seeking injunctive or other equitable relief with respect to the class as a whole, the amount-in-controversy analysis should turn on whether, in a hypothetical suit between one plaintiff and one defendant, the cost to the plaintiff of obtaining the relief or the cost to the defendant of providing it would exceed the jurisdictional amount. See *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 610 (7th Cir. 1997) (Posner, C.J.) (to measure the amount in controversy from the defendant's perspective in a class action seeking injunctive relief, "[t]he test * * * is the cost to each defendant of an injunction running in favor of one plaintiff"), cert. denied, 522 U.S. 1153 (1998). That analysis assures that aggregation of claims through the procedural device of a class action does not deprive parties of the access to federal court to which they would be entitled if the claims were brought individually. It likewise assures that aggregation of claims does not provide parties with access to federal court to which they would otherwise not be entitled.

1. Applying the "either perspective" rule to class actions by considering the value of an injunction running from one plaintiff to one defendant in a hypothetical individual suit comports with the "nonaggregation rule" of *Snyder* and *Zahn*. In those cases, the Court

held that class members could not aggregate their "separate and distinct claims" for damages in order to satisfy the jurisdictional amount. Thus, the class action in *Snyder* could not proceed in federal court at all, because no class member's individual claim exceeded the jurisdictional amount, whereas the class action in *Zahn* could proceed only as to those class members whose individual claims exceeded that amount. The Court explained that allowing aggregation of claims that could not have been brought in federal court separately would "seriously undercut the purpose of the jurisdictional amount requirement." *Snyder*, 394 U.S. at 340; accord *Zahn*, 414 U.S. at 301.[6]

As the Seventh Circuit explained, the "nonaggregation rule" is not violated when the amount-in-controversy analysis focuses on the benefit or cost of an injunction running from one defendant to plaintiff, because "each plaintiff's claim [is] held separate from each

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[6] The lower courts are divided over whether *Zahn*'s requirement of dismissal of class members' claims that do not satisfy the jurisdictional amount survives Congress's subsequent enactment of the supplemental jurisdiction statute, 28 U.S.C. 1367. See *Rosmer* v. *Pfizer Inc.*, 263 F.3d 110, 114 (4th Cir. 2001) (noting controversy), petition for cert. pending, No. 01-1390 (filed Mar. 14, 2002). Section 1367(a) provides, subject to specified exceptions, that

> [I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

28 U.S.C. 1367(a).

other plaintiff's claim from both the plaintiff's and the defendant's standpoint." *Brand Name*, 123 F.3d at 610. Each such claim must satisfy the jurisdictional amount, either from the plaintiff's perspective or the defendant's perspective, in order to come within the federal courts' diversity jurisdiction. Thus, no plaintiff and no defendant would be entering federal court by "rid[ing] on another's coattails." *Zahn*, 414 U.S. at 301.

2. Such an application of the "either perspective" rule not only ensures, consistent with *Snyder* and *Zahn*, that the class action device does not create jurisdiction by allowing claims that could not be adjudicated individually in federal court to be adjudicated collectively. It also avoids the converse problem by ensuring that plaintiffs cannot defeat jurisdiction by aggregating, through the class action device, claims that could be brought individually in federal court.

If, for example, a plaintiff brought an individual suit seeking injunctive relief, which would result in a benefit of $25,000 to the plaintiff but a cost of $100,000 to the defendant, the amount-in-controversy requirement would be satisfied. In the Ninth Circuit, however, if that same plaintiff sought the same relief on behalf of a class of 100 similarly situated individuals, federal jurisdiction would be lacking, because the "either perspective" rule could not be applied in a class action and each plaintiff stood to gain only $25,000. There is no plausible reason why the decision to file a class suit rather than an individual suit (or 100 separate individual suits) should defeat federal jurisdiction.[7]

[7] The logic of the Ninth Circuit's approach would suggest that the consolidation of 100 separately filed actions, each one properly in federal court, would require the dismissal of the action for lack of jurisdiction. See Pet. App. 8a ("logic would dictate that [the rule for class actions] should apply to all multi-party complaints").

Such a result is incompatible with the reasoning of *Snyder* and *Zahn*, as well as with the broader principle that federal procedural rules should not trump statutory provisions. Just as the class action device should not be understood to expand Congress's grant of diversity jurisdiction, as the Court recognized in *Snyder* and *Zahn*, the class action device should not be understood to contract Congress's grant of diversity jurisdiction. Indeed, the Court in *Snyder* expressly rejected the notion that anything in Rule 23 could have altered "the scope of the congressionally enacted grant of jurisdiction to the district courts." 394 U.S. at 336. The Court noted that any contrary understanding of Rule 23 "would clearly conflict with the command of Rule 82 that '[t]hese rules shall not be construed to extend *or limit* the jurisdiction of United States district courts.'" *Id.* at 337 (quoting Fed. R. Civ. P. 82) (emphasis added).

Indeed, Rule 23(b)(2), one of the provisions on which respondents relied in seeking class certification in this case, specifically provides for class actions when a defendant "has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." In Rule 23(b)(2) class actions, in contrast to Rule 23(b)(3) class actions based only on a common question of law and fact, the court is not required to find that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." The absence of such a requirement under Rule 23(b)(2) indicates that the drafters of the Rules understood that a class action ordinarily would be the optimal means of

adjudicating claims for injunctive and declaratory relief with respect to a class as a whole. See 7A Charles A. Wright et al., *Federal Practice and Procedure* § 1775, at 447 (1986) (observing that "[c]lass action treatment is particularly useful in this situation because it will determine the propriety of the behavior of the party opposing the class in a single action"). It would be contrary to that understanding to construe the amount-in-controversy requirement in a manner that could allow such claims in federal court when they are pursued individually, but not in a class action.

Here, for example, suppose that one respondent filed suit against petitioners, seeking the same relief that was sought in the consolidated complaint, including an injunction requiring petitioners to reestablish the rebate program. See Consolidated Complaint 13 (requesting "specific performance of the Rebate Program to plaintiffs and class members"). Such a suit would satisfy the amount-in-controversy of Section 1332, provided that the cost to each petitioner of complying with the injunction exceeded $75,000, and thus could be filed in or removed to federal court. The mere fact that respondents chose to sue collectively, rather than individually, should not operate to defeat federal jurisdiction.

3. It will often be appropriate in a class action to consider the defendant's cost of compliance with the requested injunction for an additional reason. In *Snyder* and *Zahn*, the Court contrasted the plaintiffs' claims for individual damages in those cases with plaintiffs' claims in other cases for the establishment of a common fund. The Court observed that, "when several plaintiffs unite to enforce a single title or right, in which they have a common and undivided interest, it is enough if their interests collectively equal the jurisdictional amount." *Zahn*, 414 U.S. at 294; accord *Snyder*, 394 U.S. at 335.

The distinction articulated in *Snyder* and *Zahn* is also applicable to many claims for injunctive and other equitable relief. As the Seventh Circuit explained, in analyzing a class claim for injunctive relief, as in analyzing a class claim for damages, a court must determine "whether each plaintiff is asserting an individual right or, rather a right to an undivided interest in something." *Brand Name*, 123 F.3d at 610. Thus, if the class would have "a common and undivided interest," *Zahn*, 414 U.S. at 294, in the injunction, the amount-in-controversy inquiry turns on the defendant's total costs of compliance. See *Market Co.*, 101 U.S. at 113 (considering defendant's total cost of compliance with injunction providing common relief to multiple plaintiffs), Because Rule 23(b)(2) authorizes class actions seeking injunctive relief against a defendant who "has acted to refused to act on grounds generally applicable to the class," much of the injunctive relief sought in class actions may be of the "common and undivided" variety. Of course, because of the "common and undivided" nature of such an injunction, the cost to the defendant of an injunction running to the class would be the same in many (but not all) cases as the cost of an identical injunction running to one plaintiff.

Arguably, the injunction sought in this case, which would require petitioners to reestablish the rebate program so that all class members could resume accruing rebates, would enforce a common and undivided interest. In any event, however, because the cost of providing the requested relief to any one plaintiff exceeds the $75,000 jurisdictional amount, the Court need not definitively characterize the relief sought here.

B. Measuring the Amount in Controversy in a Class Action by the Cost of an Injunction to the Defendant Promotes Fairness and Judicial Economy

A rule that enables class actions to be filed in, or removed to, federal court based on the amount in controversy to either side provides several practical advantages.

First, in class actions, as in other cases, diversity jurisdiction assures the parties of a neutral national forum. To be sure, some have questioned whether state court bias against out-of-state parties continues to exist in the modern era. See, *e.g.*, *Burford* v. *Sun Oil Co.*, 319 U.S. 315, 336 (1943) (Frankfurter, J., dissenting). Concerns about such bias nonetheless persist among out-of-state parties, especially defendants, with experience litigating in state courts. See, *e.g.*, *The Federal Courts Improvement Act: Hearing on S. 1101 Before the Subcomm. on Administrative Oversight and the Courts of the Senate Comm. on the Judiciary*, 104th Cong., 1st Sess. 48 (1995) (*Senate Judiciary Hearing*) (spokesperson for American Bar Association observes that, "while it has been suggested that there are no more prejudices" against out-of-state litigants, "trial lawyers know different"); *id.* at 56 (spokesperson for Defense Research Institute observes that "[o]ur members, who often represent controversial or unpopular defendants, can confirm from personal experience that bias still exists" against out-of-state parties). The Constitution and diversity jurisdiction statute view with "indulgence the possible fears and apprehensions of suitors" without regard to the actual extent of local bias. *Bank of the United States* v. *Deveaux*, 9 U.S. (5 Cranch) at 87.

Those concerns may be exacerbated in the context of a class action. In that context, a defendant may face the

aggregation of literally thousands of actions as well as unique pressures to settle before a final determination on the merits. See *In re Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293, 1298 (7th Cir.), cert. denied, 516 U.S. 867 (1995); Henry J. Friendly, *Federal Jurisdiction: A General View* 120 (1973).

Second, aside from any question of bias against out-of-state parties, a state court may not have the same expertise or the same resources as a federal court for handing class actions and other complex cases. See Deborah R. Hensler et al., *Class Action Dilemmas: Pursuing Public Goals for Private Gain* 481-482 (2000) (noting arguments that "state court judges, who historically have had far fewer resources at their commend, are ill-equipped to provide the kind of close attention that class actions require"); McInnis, *supra*, 6 Geo. Mason L. Rev. at 1027 (noting the perception that "federal courts, with more experienced judges and less crowded dockets, are better positioned to decide complex cases").

In federal court, moreover, the parties have the benefit of the federal Judicial Code, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence, which provide uniform national rules for the "just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1. See *Senate Judiciary Hearing* 57 (spokesperson for Defense Research Institute notes that "multi-state litigation relating to similar claims" benefits from "the procedural consistency provided by the Federal Rules of Evidence and Federal Rules of Civil Procedure"). For example, under recent amendments to Federal Rule of Civil Procedure 23, federal court litigants enjoy relatively liberal rules permitting interlocutory appeals of orders granting or denying class certification. See Fed. R. Civ. P. 23(f).

As a result of the perceived advantages of a federal forum, the trend in recent legislative proposals has been to expand access to the federal courts in class actions that involve significant financial risk for the defendant. See Br. in Opp. App. 1a-24a, 25a-45a.

Third, federal jurisdiction provides particular efficiencies where, as here, several similar suits are pending against the same defendant. If such cases can be filed in or removed to federal court, they can also be transferred to a single district court for consolidated or coordinated pretrial proceedings. See 28 U.S.C. 1407; see also 28 U.S.C. 1404(a) (allowing a case to be transferred, "[f]or the convenience of the parties and witnesses, in the interest of justice" to any other district "where it might have been brought"); cf. *Lexecon Inc.* v. *Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998) (court to which related case is transferred under 28 U.S.C. 1407 cannot invoke 28 U.S.C. 1404(a) to assign case to itself for trial). Such transfers reduce the costs and other burdens of overlapping litigation. For example, when a single federal court is overseeing discovery, parties will not be subject to multiple, and potentially conflicting, discovery schedules, rulings, and obligations. The opportunities for a comprehensive settlement of the dispute are also enhanced when all interested parties are before one court.

Finally, although 28 U.S.C. 1407 does not provide for a consolidated or coordinated trial, parties may have an incentive, once related cases have been transferred to a single district court for pretrial proceedings, to consolidate the case for trial. Here, for example, respondents elected, after the transfer to the Western District of Washington, to file a single consolidated complaint. As commentators have observed, "[b]eyond the sheer economy of not having to litigate the same matters

twice, consolidation of related proceedings can reduce such problems as inconsistent outcomes, whipsawing (from the ability of defendants in separate litigations to point to a nonparty as the one truly liable), and uncoordinated scrambles for the assets of a limited fund." Thomas D. Rowe Jr. & Kenneth D. Sibley, *Beyond Diversity: Federal Multiparty, Multiforum Jurisdiction*, 135 U. Pa. L. Rev. 7, 14-15 (1986) (quoted in ALI, *Complex Litigation: Statutory Recommendations and Analysis* 16 (1994)).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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